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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,561	03/23/2004	David L. Marvit	073338.0187 (04-50459)	8346
5073	7590	10/30/2006	FLA	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER LIANG, REGINA	
			ART UNIT	PAPER NUMBER
			2629	

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,561	<b>Applicant(s)</b> MARVIT ET AL.	
	<b>Examiner</b> Regina Liang	<b>Art Unit</b> 2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/23/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/21/05, 3/23/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 16-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 16-19 although written to include a computer readable medium, however for a logic, i.e., computer program, to be statutory subject is must be claimed as a computer program stored on a computer readable medium as set forth in page 52 of the Interim Guidelines, thus without such the claims are non-statutory in nature.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 7, 10-13, 16, 17, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lands (US 6,201,554) in view of Bartlett (US 6,573,883).

As to claims 1, 20, Lands discloses a motion controlled handheld device (Fig. 1) comprising:

a display (26) having a viewable surface and operable to generate a current image;

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a motion detection module (motion sensors 36, 38) operable to detect motion of the device within three dimensions and to identify components of the motion in relation to the viewable surface;

a display control module (Fig. 2) having a first mode of operation and a second mode of operation (col. 3, lines 40-48);

the display control module operable in the first mode of operation to monitor the motion of the device, to determine a location of the device resulting from the motion, and to modify the current image based on the resulting location of the device (zoom mode of operation as shown in Fig. 6 for example);

the display control module operable in the second mode of operation to monitor the motion of the device, to track movement of the handheld device using the motion detection module, to compare the tracked movement with the gestures to identify a matching gesture, to identify one of the commands associated with the matching gesture, and to modify the current image based on the identified command (page mode of operation as shown in Fig. 3, forward paging or backward paging correspond to the gesture commands); and

a mode selection module (buttons 28-34) operable to detect a mode selection trigger and to switch between the first mode of operation and the second mode of operation in response to detecting the mode selection trigger.

Lands does not disclose a gesture database and a gesture mapping for mapping each of the gesture an associated command. However, Fig. 3 of Bartlett teaches a motion controlled handheld device comprising a gesture database (catalog of gesture commands) maintaining a plurality of gestures, each gesture defined by a motion of the device with respect to a position of

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the device, a gesture mapping for mapping of each of the gestures to an associated command (col. 3, lines 34-37, col. 4, lines 53-60). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Lands to have the gesture database and gesture mapping as taught by Bartlett so as to “enable use of different gesture commands” such that “a great range of gesture commands is possible given the use of different axes and angular directions of rotation for a variety of different patterns of movement” (col. 2, lines 39-45 of Bartlett).

As to claims 2-3, Lands teaches the mode selection trigger comprises a change in a state of the device and the change in the state of the device occurs when the device switches from a first application to a second application (col. 4, lines 59-66 for example).

As to claim 4, the change in the state of the device occurs when the current image switches from a first image to a second image (e.g., see Figs. 3 and 6, changing the image from page mode to the image in zoom mode).

As to claim 5, Lands teaches activating a button 28 to select a page mode of operation, which reads on switching to a second mode (page mode) in response to detecting a first mode selection trigger (detecting by the CPU that the switch 28 is closed); activating a button 34 to select a zoom mode of operation, which reads on switching to a first mode (zoom mode) in response to detecting a second mode selection trigger (detecting by the CPU that the button 34 is closed).

As to claim 7, Lands teaches activating a button to select a particular mode of operation, which reads on the mode selection trigger comprises non-motion related input received using a user interface of the device.

Claims 10-13, 16, 17, which method claims corresponding to the above apparatus claims, are rejected for the same reasons as stated above since such method "steps" are clearly read on by the corresponding "means".

5. Claims 6, 9, 15, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lands and Bartlatt as applied to claims 1, 10, 16 above, and further in view of Feinstein (US 2002-0190947).

As to claim 6, Lands as modified by Bartlatt does not disclose the mode selection trigger comprises one of the gestures. However, Feinstein teaches the mode selection trigger comprises a gesture ([0073]). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Lands as modified by Bartlatt to use a gesture as the mode selection trigger since this eliminates the switches and provides for a more reliable activation of the operation mode ([0073] of Feinstein).

As to claims 9, 15, 19, Lands as modified by Bartlatt does not teach the device comprising three accelerometers. Feinstein teaches a motion controlled device comprising three accelerometers operable to detect acceleration along three axis. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Lands as modified by Bartlatt to use three accelerometers as taught by Feinstein since the three accelerometers measure the acceleration of the device along three independent directions.

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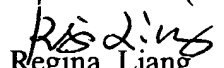
6. Claims 8, 14, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lands and Bartlatt as applied to claims 1, 10, 16 above, and further in view of Lapidot (WO 01/86920).

Lands as modified by Bartlatt does not disclose the display control module has a third mode of operation and operable in the third mode of operation to disregard the motion of the device. However, Figs. 1, 5 of Lapidot teaches a motion controlled device having different modes of operation, one of the mode operation (N) is for neutral condition, the use of movements to control functions of the device or its display unit is disabled (this corresponds to the display control module operable in the third mode of operation to disregard the motion of the device). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Lands as modified by Bartlatt to have a third mode of operation (neutral condition) as taught by Lapidot since this avoids accidental activation of the device by movement that is not intended by the user.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina Liang whose telephone number is (571) 272-7693. The examiner can normally be reached on Monday-Friday from 8AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached on (571) 272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Regina Liang  
Primary Examiner  
Art Unit 2674

10/27/06